

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (ABA) NO. 279 OF 2023

Sheikh Ajaz S/o Sheikh Sattar
..VS..

The State of Maharashtra through PSO, PS Panchpaoli, Dist. Nagpur

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Ms. S.D. Paul, Advocate for applicant.
Mr. M.J. Khan, APP for non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : JUNE 13, 2023

Present application is filed for grant of anticipatory bail under Section 438 of the Code of Criminal Procedure in connection with Crime No. 206 of 2023 registered with Police Station Panchpaoli, Nagpur City for the offence punishable under Section 379 of the Indian Penal Code.

2. The learned counsel for the applicant submits that the applicant is apprehending arrest at the hands of police as crime is registered against him on the basis of report lodged by Sau. Rupa Suresh Aadle on an allegations that she is the owner of some she-goats. On 11.03.2023 her she-goats were grazing near the Naike Talav, at that time she came home and subsequently she found that her three she-goats were missing which were stolen. On that basis she filed a report against unknown

person. During investigation, involvement of the present applicant revealed.

3. The applicant submitted that he is implicated merely on suspicion, he is not at all concerned with the alleged crime in fact his physical custody is not required and hence he be released on bail.

4. The learned counsel for the applicant submitted that maximum punishment for the alleged offence is of three years. She further submitted that in view of the directions issued by the Hon'ble Apex Court in the case of *Satender Kumar Antil Vs. Central Bureau of Investigation and another*, reported in *(2022) 10 SCC 51*, the physical arrest of the present applicant is not required and hence the applicant be released on bail.

5. The said application is strongly opposed by the State on the ground that the applicant along with other two co-accused committed the offence. Accused No.3 Akshay Mahure who is a butcher by profession and he has purchased the said stolen goats from the other co-accused. One of the co-accused is still absconding therefore custodial interrogation of the present application is required to interrogate whereabouts the absconding accused hence bail application deserves to be rejected.

6. The Hon'ble Apex Court has, in the above two cases, issued a slew of directions, and in a way laid down

a complete mechanism for investigating a crime, where the offence alleged is not punishable for more than seven years.

7. In *Arnesh Kumar's* case (cited supra), the Supreme Court, while considering the offences punishable up to 7 years, has held that the compliance of Section 41 of the Code of Criminal Procedure is mandatory and opined that if provisions of Section 41 of the Code is complied, then number of cases which come to the Court for grant of anticipatory bail will substantially reduce. The Apex Court has held that the Police Officer, before arresting, must put a question to himself; why arrest? Is it really required? What purpose it will serve? What object it will achieve? It is only after these questions are addressed and one or the other conditions of Section 41 of the Code is satisfied, power of arrest should be exercised. The Court then directed the State Government to provide to all the Police Officers a check list containing specified sub-clauses under Section 41(1)(b)(ii). The Police Officers are required to forward the check list duly filled and furnish the reasons and material which necessitated the arrest while forwarding/producing the accused before the Magistrate for further detention. The Apex Court then directs the Magistrate to peruse the report furnished by the Police Officer and only after recording its satisfaction, the Magistrate will authorise detention. It is then directed that the decision not to arrest an accused should be forwarded to the Magistrate within two weeks

from the date of the institution of the case. Such decision could only be extended by the Superintendent of Police of the district for the reasons to be recorded in writing. The Apex Court has then held that the failure to comply with the directions aforesaid shall apart from rendering the Police Officer concerned liable for departmental action, he shall also be liable to be punished for contempt of court to be instituted before the High Court having territorial jurisdiction. The Apex Court has also held that non-compliance with Section 41 of the Code would entitle the accused to grant of bail.

8. In *Satender Kumar's* case (cited supra), the Apex Court observed that despite directions in *Arnesh Kumar's* case, no concrete steps have been taken to comply with the mandate of Section 41A of the Code, and therefore, the Hon'ble Apex Court has issued guidelines to deal with the bail applications.

9. The Apex Court has held that sub-clause (1)(b)(i) of Section 41 has to be read along with sub-clause (ii), and therefore, both the elements of 'reasons to believe' and 'satisfaction qua an arrest' are mandated and accordingly are to be recorded by the Police Officer. The Apex Court has discouraged the practice followed by the Investigating Officers of mechanically reproducing in the case diary of or most of the reasons contained in Section 41 of the Code for effecting arrest.

10. Thus, firstly, the Police Officer has to take a decision whether or not the accused should be arrested. He has to record the reasons in writing in support of the decision. If the Police Officer takes decision 'not to arrest' the accused, the said decision shall be communicated to the concerned Magistrate within two weeks from the date of institution of the case/FIR. This decision, however, should be taken as expeditiously as possible, for the reason that the best evidence could be collected immediately after commission of the offence and further to rule out the possibility of tampering with the evidence. If the Police Officer takes a decision 'to arrest' the accused, then upon his arrest the Police Officer is duty-bound to produce the accused before the Magistrate within 24 hours and while producing the accused, the Police Officer is duty-bound to furnish the reasons and material which necessitated the arrest and thereupon the Magistrate is duty-bound to peruse the report furnished by the Police Officer and only after recording its satisfaction the Magistrate will authorise further detention. Needless to mention that the satisfaction by the Magistrate will be reflected in its order.

11. In view of the above said directions, the Investigating Officer therefore is expected to avoid arresting the persons and sending them to jail, if it is possible for him to complete the investigation without arresting the accused. As per the reply of the State, the custodial interrogation is required only for interrogation

regarding the absconding accused. The physical custody of the present applicant is not required for such type of interrogation. Considering the same, the application deserves to be allowed by imposing certain conditions. Hence, I pass the following order :

- (i) The application is allowed.
- (ii) The applicant – Sheikh Ajaz S/o Sheikh Sattar, in connection with Crime No. 206 of 2023 registered with Police Station Panchpaoli, Nagpur City for the offence punishable under Section 379 of the Indian Penal Code is released on bail in the event of his arrest on executing P.R. bond of Rs.15,000/- with one solvent surety of the like amount.
- (iii) The applicant shall attend the Police Station as and when required for investigation purpose.
- (iv) The applicant shall furnish his cellphone number and address to the address proof.
- (v) The applicant shall not induce, pressurize and threaten any witness who are connected with the said crime.

12. The Criminal Application is disposed of.

(URMILA JOSHI-PHALKE, J.)